

This letter discusses the meaning of "manufacture" for purposes of the Cigarette Tax Act. See 35 ILCS 130/1. (This is a PLR).

July 13, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter of May 11, 2001 and supplemental information submitted on June 22, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

AAA is an Illinois Limited Liability Company that operates as a private label manufacturer of cigarettes. AAA is requesting a private letter ruling on its classification as a manufacturer pursuant to the Illinois Cigarette Tax Act at 35 ILCS 130 et sequentes (hereinafter 'Cigarette Tax Act'). As a manufacturer under the Cigarette Tax Act, AAA could be licensed to apply tax stamps and distribute cigarettes in the State of Illinois. This request is made on behalf of AAA by one of its members, NAME, who also acts as its attorney.

The definition of 'Distributor' under the Cigarette Tax Act, 35 ILCS 130 § 1, is as follows:

'Distributor' means any and each of the following:

- (1) Any person engaged in the business of selling cigarettes in this State...
- (2) Any person who makes, manufactures or fabricates cigarettes in this State for sale in this State...

The Cigarette Tax Act, however, does not define the term 'maker, manufacturer, or fabricator'. AAA asserts that it is the manufacture of its cigarette brand, and therefore, should be licensed as a cigarette distributor in the State of Illinois. This assertion is based on the following facts.

AAA exclusively owns the intellectual property rights to its cigarette brand name for tobacco products in the United States and the Country of XYZ, and has the capacity to enter into an effective agreement concerning the sale or transfer of its brand name. No other entity can independently, manufacture, export, import, or distribute it brand without

express permission of AAA. No other entity sells AAA's cigarette brand. An application for trademark registration was made on DATE1 with the United States Patent and Trademark Office under serial number ####. Also, an application for trademark registration was made on DATE2.

Moreover, AAA controls the entire production of the brand. It decides on the tobacco blend, cigarette and filter specifications, and packaging requirements. The cigarette brand was designed specifically to meet the market demand and U.S. legal requirements. Moreover, AAA produces the engineering drawings for the packaging and graphic designs. It approves all prototypes. It has the authority to start and stop production. It purchases all raw materials and packaging prior to the start of production. It arranges and manages all shipping, taking possession F.O.B., which means it has the risk of loss during shipping.

AAA organizes and supervises separate independent subcontractors for tobacco purchases, packaging production, and cigarette production. As brand owner, AAA can utilize the services of multiple subcontractors performing similar services, change subcontractors, or develop and perform the services in its own facilities.

AAA has legal responsibility to comply with all United States Code statutory requirements regulated by the Federal Trade Commission, Bureau of Alcohol, Tobacco, and Firearms, Department of Health and Human Resources, U.S. Customs, and the United States Patent and Trademark Office. It must also comply with all foreign legal requirements, such as intellectual property registration, required for production and exportation.

AAA's cigarette brand is manufactured to compete in the United States market against other cigarette brands. AAA has no interest in distributing the cigarette brands of other companies.

It will distribute its brand directly to retailers and through other distributors. AAA assumes all legal liability for its product.

The following documents are attached in **Addendum I** to support the above statements:

AAA's State of Illinois Articles of Organization, Federal Trade Commission approval of packaging and health warning rotation plan, Bureau of Alcohol, Tobacco and Firearms tobacco products import permit, content report compliance letter issued by Department of Health and Human Services, trademark filing receipts issued by United States Patent and Trademark Office and XYZ Trade Marks Registry.

Finally, in compliance with 2 Illinois Administrative Code, CH. I, Sec 1200.110 (b) (3), (4), (5), (6) (7) and (8), AAA states:

- ☐ No audit or litigation is pending with the Department concerning this issue or the requester;
- ☐ To the best of AAA and its members' knowledge, the Department has not previously ruled on this issue, or a similar issue, except AAA's recent request which was dismissed on jurisdictional grounds;

- ☐ AAA is citing other legal authorities, *as evidence of legislative reasoning*, on the issue of tobacco product's manufacturers. see **Addendum II**;
- ☐ AAA has not located any legal authorities contrary to its views;
- ☐ Section (b) (7) is not applicable to this request.

WHEREFORE, AAA is requesting that the Legal Division of the Illinois Department of Revenue state its position on the above issue, and comment on the affirmations presented by AAA.

Under the Cigarette Tax Act, 'distributor' means 'any and each of the following:

- (1) Any person engaged in the business of selling cigarettes in this State who brings or causes to be brought into this State from without this State any original packages of cigarettes, on which original packages there is no authorized evidence underneath a sealed transparent wrapper showing that the tax liability imposed by this Act has been paid or assumed by the out-o-f-State seller of such cigarettes, for sale or other disposition in the course of such business.
- (2) Any person who makes, manufactures or fabricates cigarettes in this State for sale in this State, except a person who makes, manufactures or fabricates cigarettes as a part of a correctional industries program for sale to residents incarcerated in penal institutions or resident patients of a State-operated mental health facility.
- (3) Any person who makes, manufactures or fabricates cigarettes outside this State, which cigarettes are placed in original packages contained in sealed transparent wrappers, for delivery or shipment into this State, and who elects to qualify and is accepted by the Department as a distributor under Section 4b of this Act." 35 ILCS 130/1.

It is our understanding that you are asking the Department to confirm that AAA is a "person who...manufactures...cigarettes," under the Cigarette Tax Act. Based upon the representations made in your letters of May 11, 2001 and June 22, 2001 and the documents accompanying these letters, it is our determination that AAA is such a person.

Section 1 of the Act provides, in part, that a distributor includes "[a]ny person who makes, manufactures or fabricates cigarettes outside this State, which cigarettes are placed in original packages contained in sealed transparent wrappers, for delivery or shipment into this State, and who elects to qualify and is accepted by the department as a distributor under Section 4b of this Act." See, 35 ILCS 130/1.

The Cigarette Tax Act does not define the term "manufacture." Therefore, we must turn to the principles of statutory construction in order to give meaning to the term. One of the primary rules of statutory construction is to determine and give effect to the intent of the legislature. It is the opinion of the Illinois Supreme Court that legislative intent is best determined by the statutory language, which should be given its plain and ordinary meaning. *Eagan v. Chicago Transit Authority*, 158 Ill. 2d 527, 531-532 (1994).

According to Webster's Third New International Dictionary, the term "manufacture," when used as a verb means "1) to make (as raw material) into a product suitable for use...; 2a) to make from raw materials by hand or by machinery...; 2b) to produce according to an organized plan and with division of labor...; 3) to make up sometimes with the intent to deceive...; 4a) to produce as if by manufacturing...; 4b) to produce from different and usu. less specialized materials in the living body...."

You have indicated that AAA exclusively owns the intellectual property rights to its cigarette brand name for tobacco products in the United States and in XYZ and has the capacity to enter into effective agreements concerning the sale or transfer of this brand name. No other entity can independently manufacture, export, import or distribute this brand without the express permission of AAA. Applications for trademark registration have been made with the U.S. government and the government of XYZ.

You have also indicated that AAA, while contracting out most of the processes involved with production of the product, controls the entire production of its brand. AAA decides the tobacco blend, cigarette and filter specifications and packaging requirements. AAA produces the engineering drawings for the packaging and graphic designs and approves all prototypes. AAA purchases all raw materials and packaging prior to the start of production. AAA has the authority to start and stop production. AAA arranges and manages all shipping, taking possession of the product F.O.B. XYZ. AAA has the legal responsibility of complying with all U.S. Code requirements administered by the Federal Trade Commission, the Bureau of Alcohol, Tobacco, and Firearms, the Department of Health and Human Resources, the U.S. Customs Service, and the U.S. Patent and Trademark Office, as well as all foreign legal requirements.

Based upon these assertions, it is our opinion that AAA has full responsibility for and control of the cigarette production process. Through the contracting process, AAA engages in the activities that constitute manufacturing as defined by Webster. Therefore, it is our opinion that for purposes of the Cigarette Tax Act, AAA is a person who manufactures cigarettes.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Enc.